

Animal Welfare and Trespass Legislation Amendment Bill 2020

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

**Animal Welfare and Trespass Legislation
Amendment Bill 2020**

A Bill for

An Act —

- **to amend the *Animal Welfare Act 2002* to make provision for designated inspectors; and**
- **to amend *The Criminal Code* and the *Restraining Orders Act 1997* to make provisions relating to trespass on a place where animal source food production is carried out.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Animal Welfare and Trespass Legislation Amendment Act 2020*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the 14th day after that day.

1 **Part 2 — *Animal Welfare Act 2002* amended**

2 **3. Act amended**

3 This Part amends the *Animal Welfare Act 2002*.

4 **4. Section 5 amended**

5 In section 5(1) insert in alphabetical order:

6

7 *designated inspector* means a general inspector
8 designated under section 35A(1) as a designated
9 inspector;

10

11 **5. Section 35A inserted**

12 After section 35 insert:

13

14 **35A. Designated inspectors**

15 (1) The CEO may, by written notice, designate as a
16 designated inspector a general inspector who is a
17 member of the staff of the Department.

18 (2) A designation under subsection (1) remains in force for
19 the period specified in the notice of designation unless
20 before the end of that period —

21 (a) the designation is cancelled by the CEO by
22 written notice to the inspector; or

23 (b) the inspector ceases to be a general inspector.

24 (3) The CEO may, by written notice, restrict the authority
25 of a designated inspector to exercise a power under
26 section 38(1A) by limiting all or any of the
27 following —

28 (a) the places where the power may be exercised;

29 (b) the times when the power may be exercised;

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- 1 (c) the circumstances in which the power may be
2 exercised.
- 3 (4) When the authority of a designated inspector is
4 restricted under subsection (3), the power conferred on
5 the inspector under section 38(1A) is limited to the
6 extent set out in the notice.
- 7 (5) A restriction under subsection (3) —
- 8 (a) may be imposed when the inspector is
9 designated under subsection (1) or at a later
10 time; and
- 11 (b) may be varied or cancelled by the CEO by
12 written notice to the inspector.
13

14 **6. Section 36A inserted**

15 At the beginning of Part 4 Division 2 insert:
16

17 **36A. Terms used**

18 In this Division —

19 ***abattoir*** —

- 20 (a) means any place used for or in connection with
21 the slaughtering of animals for sale for human
22 consumption; and
- 23 (b) includes a holding yard or other place used for
24 or in connection with the slaughtering of those
25 animals;

26 ***animal source food production*** has the meaning given
27 in *The Criminal Code* section 70A(1);

28 ***animal source food production facility*** has the
29 meaning given in *The Criminal Code* section 70A(1);

30 ***intensive production*** means an activity that is carried
31 out at an animal source food production facility during

- 1 which, in the ordinary course of animal source food
2 production, any animals involved in the production do
3 not have an opportunity to graze or forage outside;
4 *intensive production place* means a non-residential
5 place where intensive production is carried out;
6 *knackery* —
7 (a) means any place used for or in connection with
8 the slaughtering and processing of animals for
9 sale for animal consumption; and
10 (b) includes a holding yard or other place used for
11 or in connection with the slaughtering and
12 processing of those animals.
13

14 **7. Section 37 amended**

15 After section 37(1)(a) insert:

- 16
17 (aa) if the inspector is a designated inspector — to
18 monitor compliance with Part 3, directions
19 given under section 40(1) or 47(1) and orders
20 made under section 55(1), in relation to any of
21 the following —
22 (i) intensive production;
23 (ii) an activity carried out at an abattoir;
24 (iii) an activity carried out at a knackery;
25 and
26

27 **8. Section 38 amended**

28 (1) After section 38(1) insert:

- 29
30 (1A) In addition, a designated inspector may, for the purpose
31 of carrying out the function referred to in

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section 37(1)(aa), enter at any time any of the following places —

- (a) if the inspector believes, on reasonable grounds, that a place is an intensive production place — the place;
- (b) an abattoir;
- (c) a knackery.

(2) In section 38(2) after “or (e)” insert:

or (1A)

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Part 3 — *The Criminal Code* amended

9. Act amended

This Part amends *The Criminal Code*.

10. Section 70A amended

(1) In section 70A(1) insert in alphabetical order:

abattoir has the meaning given in the *Animal Welfare Act 2002* section 36A;

animal source food production means an activity carried out —

- (a) at an animal source food production place; and
- (b) for the purpose of, or in connection with, commercial food production;

animal source food production facility means any of the following places, operated for the purpose of commercial food production —

- (a) a farm or other place where an animal is reared or fattened;
- (b) a dairy farm;
- (c) an egg farm or other place where poultry are kept to produce eggs;

animal source food production place means any of the following places —

- (a) an animal source food production facility;
- (b) an abattoir;
- (c) a knackery;

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- 1 **circumstances of aggravation**, in relation to a trespass
2 on an animal source food production place, means
3 circumstances in which a person, in the course of, or as
4 a result of committing the trespass —
- 5 (a) interferes with, or intends to interfere with,
6 animal source food production; or
- 7 (b) in the context of another person’s engagement
8 in animal source food production — assaults,
9 intimidates or harasses, or intends to assault,
10 intimidate or harass —
- 11 (i) the other person; or
- 12 (ii) a family member of the other person;
- 13 **family member**, in relation to a person, means —
- 14 (a) the spouse or de facto partner of the person; or
- 15 (b) a parent, child, brother, sister, uncle, aunt or
16 cousin of the person or of the person’s spouse
17 or de facto partner; or
- 18 (c) the spouse or de facto partner of a person
19 referred to in paragraph (b); or
- 20 (d) a grandchild or grandparent of the person or of
21 the person’s spouse or de facto partner;
- 22 (e) a guardian or ward of the person;
- 23 (f) if the person is an Aboriginal person or a Torres
24 Strait Islander (**indigenous person**) — a person
25 regarded under the customary law or tradition
26 of the indigenous person’s community as a
27 member of the extended family or kinship
28 group of the indigenous person;
- 29 **interfere with**, in relation to animal source food
30 production, includes any of the following —
- 31 (a) negatively impact biosecurity, as defined in the
32 *Biosecurity and Agriculture Management*

-
- 1 *Act 2007* section 6, in relation to the animal
2 source food production;
- 3 (b) create a risk to the welfare, safety or health of
4 an animal involved in the animal source food
5 production;
- 6 (c) in the course of the animal source food
7 production — create a risk to the integrity or
8 safety of meat, eggs or dairy products;
- 9 (d) release an animal involved in the animal source
10 food production, or cause it to escape, from an
11 animal source food production place or an
12 enclosure at that place;
- 13 (e) destroy, damage, steal or otherwise interfere
14 with property used in the animal source food
15 production;
- 16 (f) give a person engaged in animal source food
17 production reasonable grounds to believe that
18 something referred to in paragraphs (a) to (e)
19 has occurred or is likely to occur;

20 ***knackery*** has the meaning given in the *Animal Welfare*
21 *Act 2002* section 36A;

22
23 (2) Delete section 70A(2) and insert:

24
25 (2) A person who, without lawful excuse, trespasses on a
26 place commits an offence.

27 Penalty for this subsection: imprisonment for
28 12 months and a fine of \$12 000.

29 (2A) A person who, without lawful excuse, trespasses on an
30 animal source food production place, in circumstances
31 of aggravation, commits an offence.

32 Penalty for this subsection: imprisonment for 2 years
33 and a fine of \$24 000.

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- 1 (2B) If a court sentencing an adult offender for an offence
2 under subsection (2A) does not impose a term of
3 imprisonment then, except as provided in
4 subsection (2C) and despite the *Sentencing Act 1995*,
5 the court must impose —
- 6 (a) a community order under the *Sentencing*
7 *Act 1995* that includes —
- 8 (i) a supervision requirement with a
9 direction that the offender must not
10 enter or remain on an animal source
11 food production place specified, or of a
12 kind specified, in the order; and
- 13 (ii) a community service requirement;
- 14 and
- 15 (b) a fine of at least \$2 400.
- 16 (2C) Subsection (2B) does not apply in a particular case if
17 the court is satisfied that exceptional circumstances
18 exist in that case.
- 19
- 20 (3) In section 70A(3) delete “subsection (2),” and insert:
21
- 22 subsection (2) or (2A),
23

1 **Part 4 — *Restraining Orders Act 1997* amended**

2 **11. Act amended**

3 This Part amends the *Restraining Orders Act 1997*.

4 **12. Section 5 amended**

5 In section 5(1)(d)(i) delete “paragraph (a), (b) or (c)” and insert:

6

7 paragraph (a) or (c)

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9 **13. Section 34 amended**

10 In section 34(a):

11 (a) in subparagraph (iii) delete “peace;” and insert:

12

13 peace; or

14

15 (b) after subparagraph (iii) insert:

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17 (iv) commit an offence under *The Criminal*
18 *Code* section 70A(2A);

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1 **14. Section 35 amended**

2 (1) After section 35(2) insert:

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4 (2A) When considering whether to make an MRO for
5 reasons referred to in section 34(a)(iv) and the terms of
6 the order, a court is to have regard to —

- 7 (a) the need to ensure that the following persons
8 are protected from the effects of an offence
9 under *The Criminal Code* section 70A(2A) —
- 10 (i) a person engaged in animal source food
11 production, as defined in *The Criminal*
12 *Code* section 70A(1);
- 13 (ii) a family member, as defined in *The*
14 *Criminal Code* section 70A(1), of a
15 person referred to in subparagraph (i);

16 and

- 17 (b) the wellbeing of children who are likely to be
18 affected by the respondent's behaviour or the
19 operation of the proposed order; and
- 20 (c) the accommodation needs of the respondent;
21 and
- 22 (d) hardship that may be caused to the respondent
23 if the order is made; and
- 24 (e) any criminal convictions of the respondent; and
- 25 (f) other current legal proceedings involving the
26 respondent; and
- 27 (g) other matters the court considers relevant.

28

29 (2) In section 35(3) delete “subsection (1)(a) and (b) or (2)(a)
30 and (b)” and insert:

31

32 subsections (1)(a) and (b), (2)(a) and (b) and (2A)(a) and (b)

33

1 **15. Section 36 amended**

2 (1) In section 36(1):

3 (a) in paragraph (c) delete “peace.” and insert:

4

5 peace; or

6

7 (b) after paragraph (c) insert:

8

9 (d) committing an offence under *The Criminal*
10 *Code* section 70A(2A).

11

12 (2) In section 36(3) delete “subsection (1)(c),” and insert:

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14 subsection (1)(c) or (d),

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16
